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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/360,521    07/23/99    RESTLE    S    05725.0446-0

HM12/1004

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EXAMINER

WELLS, L

ART UNIT

PAPER NUMBER

1619

DATE MAILED:

10/04/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

**Office Action Summary**

Application N .

09/360,521

Applicant(s)

RESTLE ET AL.

Examiner

Lauren Q Wells

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 September 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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### DETAILED ACTION

Claims 1-46 are pending.

#### *Response to Applicant's Arguments/Amendment*

The Applicant's arguments filed September 4, 2001 (Paper No. 13) to the rejection of claims 1-46 made by the Examiner under 35 USC 102(b), 103 and the judicially created doctrine of double patenting have been fully considered and deemed not persuasive. The rejection of claims 1-46 made by the Examiner under 35 USC 102 (f) and 112, and the objections to the specification, have been fully considered and deemed persuasive. Therefore, the said rejections are hereby withdrawn.

#### *102 Rejection Maintained*

The rejection of claims 1-12, 2-25, 32, 29 and 43-46 under 35 U.S.C. 102(b) as being unpatentable over Morlino (4,185,087) is MAINTAINED for the reasons set forth in the Office Action mailed May 4, 2001, Paper No. 11, and those found below.

Applicant argues that "the Office has contrived its 102(b) rejection by picking, choosing and combining various disclosures in Morlino" and that "the Office has not cited, and Morlino does not contain any teaching by which one skilled in the art would understand that the composition contains both an amphoteric and an anionic surfactant". These arguments are not persuasive. See claim 1 of Morlino, wherein a composition comprising 0.1-10% of formula (IV) of the instant invention, water, and 0-30% of *one or more amphoteric*, cationic, *anionic*, non-ionic, poly non-ionic or zwitterionic surfactants is claimed. While Morlino does not explicitly state the ratio, it is inherent, as there are no restrictions on the individual amount of surfactants

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used in combination. Thus, Morlino's claim encompasses the recited ratio of the instant invention.

### ***103 Rejection Maintained***

The rejection of claims 1-46 under 35 U.S.C. 103(a) as being unpatentable over Morlino in view of Hughes (5,567,428) in further view of Naito et al. (5,476,649) is MAINTAINED for the reasons set forth in the Office Action mailed May 4, 2001, Paper No. 11, and those found below.

Applicant argues that "the Office has not shown and Morlino does not teach or suggest a composition comprising both an anionic and an amphoteric surfactant, much less a composition with both surfactants at the claimed ratio". This argument is not persuasive. See response to this argument under the "102 Rejection Maintained" heading.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lauren Q Wells whose telephone number is (703) 305-1878. The examiner can normally be reached on M-F (7-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diana L Dudash can be reached on (703) 308-2328. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4556 for regular communications and (703) 308-4556 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.

lqw  
September 28, 2001

  
DAMERON L. JONES  
PRIMARY EXAMINER